

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
Silvia Tecun Capir, individually and on behalf of all others
similarly situated,

Plaintiff,

-against-

Taste of Italy Pizzeria Inc. d/b/a La Pequena Taste of
Italy Pizzeria & Restaurant and Segundo Carlos
Bermejo, as an individual,

Defendants.
-----X

Case No.: 1:22-cv-00412

**ANSWER WITH
AFFIRMATIVE
DEFENSES**

Defendants Taste of Italy Pizzeria Inc. d/b/a La Pequena Taste of Italy Pizzeria & Restaurant and Segundo Carlos Bermejo (together, the “Defendants”), by and through their undersigned attorneys, Levin-Epstein & Associates, P.C., as and for their answer and affirmative defenses to the Complaint, filed February 23, 2023 (the “Complaint”) of Silvia Tecun Capir (the “Plaintiff”), hereby admit, deny and allege as follows:

PRELIMINARY STATEMENT

1. The allegations contained in paragraph “1” of the Complaint set forth legal conclusions for which no response is required.
2. The allegations contained in paragraph “2” of the Complaint set forth legal conclusions for which no response is required.

JURISDICTION AND VENUE

3. The allegations contained in paragraph “3” of the Complaint set forth legal conclusions for which no response is required.
4. The allegations contained in paragraph “4” of the Complaint set forth legal conclusions for which no response is required.

5. The allegations contained in paragraph “5” of the Complaint set forth legal conclusions for which no response is required.

6. The allegations contained in paragraph “6” of the Complaint set forth legal conclusions for which no response is required.

THE PARTIES

7. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the Complaint.

8. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the Complaint.

9. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9” of the Complaint.

10. The allegations contained in paragraph “10” of the Complaint set forth legal conclusions for which no response is required.

11. The allegations contained in paragraph “11” of the Complaint set forth legal conclusions for which no response is required.

12. The allegations contained in paragraph “12” of the Complaint set forth legal conclusions for which no response is required.

13. The allegations contained in paragraph “13” of the Complaint set forth legal conclusions for which no response is required.

14. The allegations contained in paragraph “14” of the Complaint set forth legal conclusions for which no response is required.

15. The allegations contained in paragraph “15” of the Complaint set forth legal conclusions for which no response is required.

16. The allegations contained in paragraph “16” of the Complaint set forth legal conclusions for which no response is required.

17. The allegations contained in paragraph “17” of the Complaint set forth legal conclusions for which no response is required.

18. The allegations contained in paragraph “18” of the Complaint set forth legal conclusions for which no response is required.

FACTUAL ALLEGATIONS

19. Defendants deny the allegations contained in paragraph “19” of the Complaint.

20. Defendants deny the allegations contained in paragraph “20” of the Complaint.

21. Defendants deny the allegations contained in paragraph “21” of the Complaint.

22. Defendants deny the allegations contained in paragraph “22” of the Complaint.

23. Defendants deny the allegations contained in paragraph “23” of the Complaint.

24. Defendants deny the allegations contained in paragraph “24” of the Complaint.

25. Defendants deny the allegations contained in paragraph “25” of the Complaint.

26. Defendants deny the allegations contained in paragraph “26” of the Complaint.

27. Defendants deny the allegations contained in paragraph “27” of the Complaint.

28. Defendants deny the allegations contained in paragraph “28” of the Complaint.

29. Defendants deny the allegations contained in paragraph “29” of the Complaint.

30. Defendants deny the allegations contained in paragraph “30” of the Complaint.

31. Defendants deny the allegations contained in paragraph “31” of the Complaint.

COLLECTIVE ACTION ALLEGATIONS

32. No response is required to the statement set forth in paragraph “32”.

33. Defendants deny the allegations contained in paragraph “33” of the Complaint.

- 34. Defendants deny the allegations contained in paragraph “34” of the Complaint.
- 35. Defendants deny the allegations contained in paragraph “35” of the Complaint.
- 36. Defendants deny the allegations contained in paragraph “36” of the Complaint.
- 37. Defendants deny the allegations contained in paragraph “37” of the Complaint.
- 38. Defendants deny the allegations contained in paragraph “38” of the Complaint.
- 39. Defendants deny the allegations contained in paragraph “39” of the Complaint.
- 40. Defendants deny the allegations contained in paragraph “40” of the Complaint.
- 41. Defendants deny the allegations contained in paragraph “41” of the Complaint.
- 42. Defendants deny the allegations contained in paragraph “42” of the Complaint.
- 43. Defendants deny the allegations contained in paragraph “43” of the Complaint.

AS AND FOR A FIRST CAUSE OF ACTION
Overtime Wages Under The Fair Labor Standards Act

- 44. No response is required to the statement set forth in paragraph “44”.
- 45. The allegations contained in paragraph “45” of the Complaint set forth legal conclusions for which no response is required.
- 46. The allegations contained in paragraph “46” of the Complaint set forth legal conclusions for which no response is required.
- 47. The allegations contained in paragraph “47” of the Complaint set forth legal conclusions for which no response is required.
- 48. The allegations contained in paragraph “48” of the Complaint set forth legal conclusions for which no response is required.
- 49. The allegations contained in paragraph “49” of the Complaint set forth legal conclusions for which no response is required.

50. The allegations contained in paragraph “50” of the Complaint set forth legal conclusions for which no response is required.

AS AND FOR A SECOND CAUSE OF ACTION
Overtime Wages Under The New York Labor Law

51. No response is required to the statement set forth in paragraph “51”.

52. The allegations contained in paragraph “52” of the Complaint set forth legal conclusions for which no response is required.

53. The allegations contained in paragraph “53” of the Complaint set forth legal conclusions for which no response is required.

54. The allegations contained in paragraph “54” of the Complaint set forth legal conclusions for which no response is required.

AS AND FOR A THIRD CAUSE OF ACTION
Minimum Wages Under New York Labor Law

55. No response is required to the statement set forth in paragraph “55”.

56. The allegations contained in paragraph “56” of the Complaint set forth legal conclusions for which no response is required.

57. The allegations contained in paragraph “57” of the Complaint set forth legal conclusions for which no response is required.

58. The allegations contained in paragraph “58” of the Complaint set forth legal conclusions for which no response is required.

59. The allegations contained in paragraph “59” of the Complaint set forth legal conclusions for which no response is required.

60. The allegations contained in paragraph “60” of the Complaint set forth legal conclusions for which no response is required.

AS AND FOR A FOURTH CAUSE OF ACTION
Unpaid Wages Under The New York Labor Law

61. No response is required to the statement set forth in paragraph “61”.

62. The allegations contained in paragraph “62” of the Complaint set forth legal conclusions for which no response is required.

63. The allegations contained in paragraph “63” of the Complaint set forth legal conclusions for which no response is required.

64. The allegations contained in paragraph “64” of the Complaint set forth legal conclusions for which no response is required.

AS AND FOR A FIFTH CAUSE OF ACTION
Violation of the Wage Statement Requirements of the New York Labor Law

65. No response is required to the statement set forth in paragraph “65”.

66. The allegations contained in paragraph “66” of the Complaint set forth legal conclusions for which no response is required.

67. The allegations contained in paragraph “67” of the Complaint set forth legal conclusions for which no response is required.

AS AND FOR A SIXTH CAUSE OF ACTION
Violation of the Notice and Recordkeeping Requirements of the New York Labor Law

68. No response is required to the statement set forth in paragraph “68”.

69. The allegations contained in paragraph “69” of the Complaint set forth legal conclusions for which no response is required.

70. The allegations contained in paragraph “70” of the Complaint set forth legal conclusions for which no response is required.

PRAYER FOR RELIEF

71. Defendants deny that Plaintiff is entitled to any relief sought in the “WHEREFORE” clause.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

72. Plaintiff fails to state a claim, in whole or in part, upon which relief may be granted, either on his own behalf or on behalf of those persons who he purports to represent, or to whom he purportedly is similarly situated.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

73. Assuming arguendo, Defendants violated any provision of the FLSA and/or New York Labor Law, such violation was not pursuant to a uniform policy or plan.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

74. To the extent that the period of time alluded to in the Complaint, or the period of time alleged later in this action, predates the limitations period set forth in Section 6(a) of the Portal-to-Portal Act, 29 U.S.C. § 255(a), and any limitations period established by New York state law, such claims of Plaintiff are barred.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

75. Defendants did not engage in willful or unlawful conduct.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

76. As to any liquidated damage or other claim of the Plaintiff, Defendants assert they acted in subjective good faith and had objectively reasonable grounds for the belief that the Defendants’ policies and employee payments or omissions, including but not limited to the payment of wages complied with the law and were not a violation of the Fair Labor Standards Act.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

77. Defendants are relieved of any liability for Plaintiff's wage claim to the extent that the claims are premised upon traveling to and from the actual place of performance, activities which are preliminary and/or post-liminary to the alleged principal activity of employment because such activities were not compensable by the provisions of Section 4 of the Portal-to-Portal Act, 29 U.S.C. 254.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

78. Plaintiff's claims are barred in whole or in part to the extent that the work they performed falls within exemptions, exclusions, exceptions, offsets or credits permissible under the FLSA or NYLL, including but not limited to those provide for in 29 U.S.C. 207, 213 and its state law equivalents.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

79. This action cannot be certified and supplemental or other jurisdiction should not be exercised over Plaintiff's New York Labor Law claims.

DEFENDANTS' GENERAL DEFENSES

FIRST GENERAL DEFENSE

80. Plaintiff was paid in accordance with all applicable law.

RESERVATION OF RIGHTS

81. Defendants reserve the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information and investigation into the Plaintiff's claims.

82. Defendants reserve the right to assert claims against Plaintiff arising out of Plaintiff's acts of theft.

WHEREFORE, Defendants demands judgment in their favor:

- (a) denying Plaintiff is entitled to the relief for which he prays on behalf of himself or any other individual or to any other relief.
- (b) dismissing the Complaint against Defendants on the merits with prejudice and in its entirety;
- (c) awarding Defendants their costs and disbursement, including reasonable attorneys' fees incurred in the action; and
- (d) granting Defendants such other and further relief as the Court may deem just and proper.

Dated: May 23, 2023
New York, New York

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